IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

EOD
08/08/2022

IN RE:	§	
	§	
DONALD R. TRIPLETT, JR.	§	Case No. 19-42570
xxx-xx-8753	§	
	§	
Debtor	§	Chapter 7

KEITH BLACK	§	
	§	
Plaintiff	§	
	§	
v.	§	Adversary No. 20-4057
	§	
DONALD R. TRIPLETT, JR.	§	
	§	
Defendant	§	

RONALD VALK AND	§	
SHAWN VALK	§	
	§	
Plaintiffs	§	
	§	
v.	§	Adversary No. 20-4058
	§	
DONALD R. TRIPLETT, JR.	§	
	§	
Defendant	§	

JEREMY HALTOM	§	
	§	
Plaintiff	§	
	§	
v.	§	Adversary No. 20-4059
	§	
DONALD R. TRIPLETT, JR.	§	
	§	
Defendant	§	

ORDER GRANTING AND DENYING IN PART DISCOVERY MOTIONS AND IMPOSING SUA SPONTE MEET AND CONFER REQUIREMENT

On August 8, 2022, the Court considered the following emergency motions filed by Plaintiffs in each of the above matters together with corresponding emergency hearing requests:

1) "Emergency Motion for Protective Order" filed by Plaintiff, Keith Black, in Case 20-4057 at dkt. #152;[1]

2) "Emergency Motion for Protective Order" filed by Plaintiff, Ron Valk, in Case 20-4058 at dkt. #177;[2]

3) "Emergency Motion for Protective Order" filed by Plaintiff, Shawn Valk, in Case 20-4058 at dkt. #178;[3]

4) "Emergency Motion for Protective Order" filed by Plaintiff, Jeremy Haltom, in Case 20-4059 at dkt. #154;[4]

All of these filings are referred to collectively as the "Motions."

Yet again the Court finds itself reviewing multiple discovery motions on an

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[1] Plaintiff, Keith Black, also filed a corresponding "Request For Emergency Consideration" in Case 20-4057 at dkt. #153.

[2] Plaintiff, Ron Valk, also filed a corresponding "Request For Emergency Consideration" in Case 20-4058 at dkt. #179.

[3] Plaintiff, Shawn Valk, also filed a corresponding "Request For Emergency Consideration" in Case 20-4058 at dkt. #179.

[4] Plaintiff, Jeremy Haltom, also filed a corresponding "Request For Emergency Consideration" in Case 20-4059 at dkt. #155.

emergency basis in these matters. In each of the aforementioned cases, Defendant, Donald R. Triplett Jr., served a deposition notice seeking to depose the named Plaintiffs. Defendant seeks to depose Plaintiff, Keith Black, on August 9, 2022 beginning at 10:00 a.m.[5] Defendant seeks to depose Plaintiff, Jeremy Haltom, on August 10, 2022 beginning at 1:00 p.m.[6] Defendant seeks to depose Plaintiff, Ron Valk, on August 11, 2022 beginning at 10:00 a.m.[7] Defendant seeks to depose Plaintiff, Shawn Valk, on August 16, 2022 beginning at 10:00 a.m.[8] These notices were sent on August 2, 2022, and contemplate each of these depositions (the "Depositions") being taken at the offices of Plaintiffs' counsel, Tittle Law Group, 5550 Granite Parkway, Suite 290, Plano, Texas 75024.

According to the Motions, counsel for Defendant "without agreement or consent" by Plaintiffs or their counsel, noticed the Depositions. The Motions do not indicate that agreement or consent would be given for alternative dates or locations. Rather the Motions seek orders "protecting the Plaintiff[s] from any requirement that [they] appear"

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[5] *See* Defendant's "First Notice of Intention to Take Oral Deposition of Plaintiff Keith Black" in Case 20-4057 at dkt. #151.

[6] *See* Defendant's "First Notice of Intention to Take Oral Deposition of Plaintiff Jeremy Haltom" in Case 20-4059 at dkt. #153.

[7] *See* Defendant's "First Notice of Intention to Take Oral Deposition of Plaintiff Ron Valk" in Case 20-4058 at dkt. #175

[8] *See* Defendant's "First Notice of Intention to Take Oral Deposition of Plaintiff Shawn Valk" in Case 20-4058 at dkt. #176.

at the Depositions and pronounces the Depositions "needless and entirely outside the scope of permissible discovery." These are not the first protective orders to have been sought by Plaintiffs, and the pattern of emergency difficulties during discovery is a familiar one in these cases. As this Court has previously observed, there has been a distinct lack of civility displayed by the parties in the conduct of these cases.

There are two questions raised for the Court by the Motions. The first is whether Defendant should be permitted to depose Plaintiffs at all. Plaintiffs argue in the Motions, and here the Court notes these arguments are not new, that "there is absolutely no conceivably relevant information Defendant could possibly obtain through a deposition" of the Plaintiffs because these cases concern "only causes of action under section 727."[9] The scope of discovery permitted by the rules is designed to facilitate the exchange and production of "*any* nonprivileged matter that is relevant to *any* party's claim *or defense* and proportional to the needs of the case" [emphasis added]. Fed R. Civ. P. 26(b)(1).[10]

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[9] Mot. 5, ¶ 18, ECF No. 152, Case 20-4057; Mot. 5, ¶ 18, ECF No. 177, Case 20-4058; Mot. 5, ¶ 18, ECF No. 177, Case 20-4058; Mot. 5, ¶ 18, ECF No. 154, Case 20-4059.

[10] This portion of the rule in its entirety reads:

> (1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed R. Civ. P. 26(b)(1).

Plaintiffs are seeking in these cases to deny Defendant a discharge for his alleged failure to comply with earlier discovery orders from the main bankruptcy case and for alleged inaccuracies in Debtor's schedules concerning which Plaintiffs or their agents appear to have possible knowledge.[11] Defendant has also filed three extensive "Motion[s] for Sanctions" against Plaintiffs in each of these cases which remain pending.[12] Under these circumstances in these cases the Court finds Defendant should have the opportunity to depose Plaintiffs in order to discover relevant information regarding their allegations and claims against him.

The second question is whether Plaintiffs have been given reasonable notice of the date and time for the Depositions. Plaintiffs are correct when they state that Fed R. Civ. P. 30(b)(1) requires that "[a] party who wants to depose a person by oral questions must give reasonable written notice to every other party." Fed R. Civ. P. 30(b)(1).[13] But what amount of notice is reasonable? The Fifth Circuit has held that four days' notice for fifteen depositions to be held in different cities is not reasonable. *Mims v. Cent. Mfrs. Mut. Ins. Co.*, 178 F.2d 56 (5th Cir. 1949). Another court has held that seven days' notice of a single deposition is reasonable. *Leamon v. KBR, Inc.*, Civil Action No. H-10-253, 2011 U.S. Dist. LEXIS 167527, at *4 (S.D. Tex. 2011). Still a different court considered

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[11] *See* First Amend. Compl., ECF No. 145, Case 20-4057; First Amend. Compl., ECF No. 169, Case 20-4058; First Amend. Compl., ECF No. 147, Case 20-4059.

[12] Mot. for Sanctions, ECF No. 141, Case 20-4057; Mot. for Sanctions, ECF No. 165, Case 20-4058; Mot. for Sanctions, ECF No. 143, Case 20-4059.

[13] Fed R. Civ. P. 30 is applicable to in adversary proceedings pursuant to Fed. R. Bankr. P. 7030.

five days' notice reasonable. *In re Lila, Inc.*, 133 B.R. 588, 591 (Bankr. E.D. Pa. 1991). Two weeks was insufficient notice for 85 depositions scheduled immediately before the discovery deadline. *Harry A. v. Duncan*, 223 F.R.D. 536, 538 (D. Mont. 2004). What is reasonable "depends on the circumstances." *Nelson v. AMX Corp.*, No. 3:04-CV-1350-H, 2005 U.S. Dist. LEXIS 11441, at *13 (N.D. Tex. 2005). Here the Defendant provided from seven to fourteen days notice and sought to have the Depositions at the deponents' counsel's office. Discovery is near its end in this case, but Defendant's counsel appeared for Defendant approximately two months ago. These cases have been pending more than two years, and for a large portion of that time Defendant was *pro se*. With respect to the August 16, 2022 deposition of Plaintiff, Shawn Valk, the Court finds the amount of notice given reasonable and sufficient. With respect to the August 9, 2022 deposition of Plaintiff, Keith Black, the August 10, 2022 deposition of Plaintiff, Jeremy Haltom, and the August 11, 2022 deposition of Plaintiff, Ron Valk, the Court finds under the particularly contentious circumstances of this case that more notice is needed.

Finally, the Court finds it appropriate to impose on the attorneys involved in these matters a Meet and Confer requirement. Such a requirement has long existed in the United States District Court for the Eastern District of Texas. Civility has been lacking in these cases, and it is obvious the parties and their attorneys have not made any serious attempt to minimize disputes by conferring in advance of filings.[14] For this reason the

[14] The Court here reminds the parties that Local District Court Rule AT-3 and the standards for attorney conduct contained therein, has been adopted by this Court pursuant to LBR 1001(i). Included in

parties are, from the entry of this Order forward, required to comply with the requirements of District Court Civil Rule Local Rule CV-7(h) and (i). A copy of this rule is attached to this Order for the parties' convenience. Accordingly, the Court finds that just cause exists for the entry of the following Order.

IT IS THEREFORE ORDERED that the Motions are **GRANTED** in part such that the following Depositions to be taken of certain Plaintiffs by Defendant, shall be rescheduled to a later date by agreement: (1) the August 9, 2022 deposition of Plaintiff, Keith Black, (2) the August 10, 2022 deposition of Plaintiff, Jeremy Haltom, and (3) the August 11, 2022 deposition of Plaintiff, Ron Valk. The location of these Depositions may also be altered by agreement, but in the absence of an agreement such Depositions shall be taken at the offices of counsel for Plaintiffs.

IT IS FURTHER ORDERED that the Motions are **DENIED** as to the following Deposition to be taken by Defendant: (1) the August 16, 2022 deposition of Plaintiff, Shawn Valk. The location of ths Deposition may also be altered by agreement, but in the absence of an agreement such Depositions shall be taken at the offices of counsel for Plaintiffs. Plaintiff, Shawn Valk, and Defendant may agree to alter the date of this Deposition, but in the absence of an agreement such Deposition shall be taken at the date and time previously noticed by Defendant.

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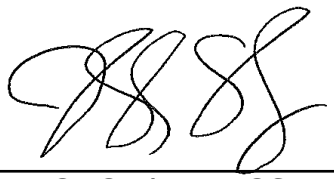
that rule is the following: "Effective advocacy does not require antagonistic or obnoxious behavior, and members of the bar will adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect." District Court Local Rule AT-3(k).

IT IS FURTHER ORDERED that to the extent the Motions seek a protective order excusing Plaintiffs in all cases from examination by deposition, the Motions are **DENIED.**

IT IS FURTHER ORDERED that from the entry of this Order forward, Plaintiffs and Defendant, and their respective counsel, are required to comply with the requirements of District Court Civil Rule Local Rule CV-7(h) and (i). Failure to comply with this rule may result in dismissal of the deficiently filed pleading.

IT IS FURTHER ORDERED that Plaintiff's emergency hearing requests with respect to the Motions listed above are **DENIED.**

Signed on 08/08/2022



THE HONORABLE JOSHUA P. SEARCY
UNITED STATES BANKRUPTCY JUDGE

LOCAL DISTRICT COURT RULE CV-7(h) and (i) (Meet and Confer)
[as of 8-8-2022]

Meet and Confer Requirements.

(h) "**Meet and Confer" Requirement**. The "meet and confer" motions practice requirement imposed by this rule has two components, a substantive and a procedural component.

For opposed motions, the substantive component requires, at a minimum, a personal conference, by telephone or in person, between an attorney for the movant and an attorney for the non-movant. In any discovery-related motion, the substantive component requires, at a minimum, a personal conference, by telephone or in person, between the lead attorney and any local counsel for the movant and the lead attorney and any local counsel for the non-movant.

In the personal conference, the participants must give each other the opportunity to express his or her views concerning the disputes. The participants must also compare views and have a discussion in an attempt to resolve their differing views before coming to court. Such discussion requires a sincere effort in which the participants present the merits of their respective positions and meaningfully assess the relative strengths of each position.

In discovery-related matters, the discussion shall consider, among other things: (1) whether and to what extent the requested material would be admissible in a trial or is reasonably calculated to lead to the discovery of admissible evidence; (2) the burden and costs imposed on the responding party; (3) the possibility of cost-shifting or sharing; and (4) the expectations of the court in ensuring that parties fully cooperate in discovery of relevant information.

Except as otherwise provided by this rule, a request for court intervention is not appropriate until the participants have met and conferred, in good faith, and concluded, in good faith, that the discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve. Good faith requires honesty in one's purpose to discuss meaningfully the dispute, freedom from intention to defraud or abuse the discovery process and faithfulness to one's obligation to secure information without court intervention. For opposed motions, correspondence, e-mails, and facsimile transmissions do not constitute compliance with the substantive component and are not evidence of good faith. Such materials, however, may be used to show bad faith of the author.

An unreasonable failure to meet and confer violates Local Rule AT-3 and is grounds for disciplinary action. A party may file an opposed motion without the required conference only when the non-movant has acted in bad faith by failing to meet and confer. The procedural requirement of the "meet and confer" rule is one of certification. It appears in Section (i) of this rule, entitled "Certificates of Conference."

(i) **Certificates of Conference**. Except as specified below, all motions must be accompanied by a "certificate of conference" at the end of the motion following the certificate of service. The certificate must state: (1) that counsel has complied with the meet and confer requirement in Local Rule CV-7(h); and (2) whether the motion is opposed or unopposed. Opposed motions shall include a statement in the certificate of conference, signed by the movant's attorney, that the personal conference or conferences required by this rule have been conducted or were attempted, the date and manner of such conference(s) or attempts, the names of the participants in the conference(s), an explanation of why no agreement could be reached, and a statement that discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve. In discovery-related motions, the certificate of conference shall be signed by the lead attorney and any local counsel. In situations involving an unreasonable failure to meet and confer, the movant shall set forth in the certificate of conference the facts believed to constitute bad faith.

Neither the "meet and confer" nor the "certificate of conference" requirements are applicable to pro se litigants (prisoner or non-prisoner) or to the following motions:

(1) to dismiss;

(2) for judgment on the pleadings;

(3) for summary judgment, including motions for partial summary judgment;

(4) for judgment as a matter of law;

(5) for new trial;

(6) issuance of letters rogatory;

(7) objections to report and recommendations of magistrate judges or special

masters;

(8) for reconsideration;

(9) for sanctions under Fed. R. Civ. P. 11, provided the requirements of Fed. R. Civ. P. 11(c)(2) have been met;

(10) for writs of garnishment; and

(11) any enforcement remedy provided for by the Federal Debt Collection Procedure Act, 28 U.S.C. § 3101, et seq.